



[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61 and 141

[Docket No.: FAA-2021-0592]

Notification of Policy for Flight Training in Certain Aircraft

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notification of policy.

SUMMARY: This notification provides clarification on flight training for compensation in certain aircraft that hold special airworthiness certificates including limited category, experimental category, and primary category aircraft. It also provides guidance on how flight training for compensation can be accomplished in these aircraft in compliance with regulations and establishes a process for owners of experimental aircraft to obtain a letter of deviation authority to receive and provide compensation for flight training in their experimental aircraft.

DATES: The policy described herein is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this policy notification, contact Erin Cappel for information about Letters of Deviation Authority and Thomas (TJ) Leahy for information about exemption, General Aviation and Commercial Division, General Aviation Operations Branch, (202) 267-1100, or e-mail 9-AFS-800-Correspondence@faa.gov, 800 Independence Ave., S.W. Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

I. Background

On April 2, 2021, the United States Court of Appeals for the District of Columbia Circuit dismissed a petition for review of the FAA's emergency cease and desist order against Warbird Adventures, Inc. and Thom Richard (hereinafter "Warbirds"), ordering that they cease and desist

from operating their limited category aircraft in violation of § 91.315 of title 14 of the Code of Federal Regulations (14 CFR). In this case, Warbirds maintained a publicly available website that advertised opportunities to fly in Warbirds' limited category aircraft at upcoming airshows and allowed members of the public to book flights in exchange for substantial amounts of money. Section 91.315 states that no person may operate a limited category aircraft carrying persons or property for compensation or hire.

Before the Court, Warbirds argued that it was conducting flight training for compensation in its limited category aircraft, which it claimed is not prohibited under § 91.315.¹ The FAA responded that, under the plain language of § 91.315, flight training for compensation constitutes operating a limited category aircraft carrying a person for compensation or hire and, therefore, is a violation of the regulation. After the Court dismissed the petition for review, several industry groups requested that the FAA publish a statement explaining the impact of the decision and providing clarification regarding flight training in general and flight training for compensation in certain aircraft that hold special airworthiness certificates.² The FAA is issuing this notification in response to the request from industry.

II. FAA Regulations and Guidance

A. Pilot Requirements and Operating Requirements

The requirements for a person exercising the privileges of a pilot certificate or a flight instructor certificate are generally contained in 14 CFR part 61. These regulations govern what is required to “act as pilot in command,” “serve as a required flightcrew member,” or “conduct flight training in an aircraft.” The regulations in 14 CFR part 91 by contrast contain operating requirements that govern how the aircraft itself may be operated. The term “operate” is broadly defined in 14 CFR 1.1 as “use, cause to use or authorize to use aircraft, for the purpose (except as provided in §91.13 of this chapter) of air navigation including the piloting of aircraft, with or

¹ The FAA has not conceded that the flights being operated by Warbirds were for the purpose of flight training.

² On April 19, 2021, AOPA, EAA, and GAMA sent a joint letter to Ali Bahrami, then Associate Administrator for Aviation Safety. A copy of this letter and the response has been placed in the docket for this notification.

without the right of legal control (as owner, lessee, or otherwise).” As such, the determination of whether someone is operating an aircraft is not contingent on ownership, flightcrew status, or the receipt of payment for the use of the aircraft.

Although a person may hold the appropriate privileges “to act as pilot in command” or “conduct flight training” under part 61, the regulations in part 91 may restrict the exercise of those privileges in a particular category of aircraft under certain conditions, such as operations conducted for compensation or hire. As defined, the term “operate” has broader meaning than the general terms used in part 61 that address “acting as pilot in command” or “exercising the privileges” of a particular pilot certificate. A person may be considered to “operate” an aircraft under the § 1.1 definition without serving as a required flightcrew member or manipulating the controls of the aircraft.

As noted, under § 91.315, no person may operate a limited category aircraft carrying persons or property for compensation or hire. Based on the plain language of the regulation, the FAA’s position as represented in a 2014 legal interpretation³ and restated in the *Warbirds* case is that a flight instructor who is operating (i.e. “using”) a limited category aircraft that is carrying a person (e.g. the person receiving instruction) for compensation (e.g. monetary payment) is acting contrary to the regulation.⁴

The regulations governing other categories of aircraft (experimental aircraft in § 91.319 and primary category aircraft in § 91.325) include the same language as the prohibition in § 91.315. The prohibitions in §§ 91.319 and 91.325 that mirror the language in § 91.315 must be read to have the same meaning.⁵ As such, a flight instructor providing flight training in one of

³ FAA Legal Interpretation to Gregory Morris (October 7, 2014). The Morris Interpretation concluded, inter alia, that § 91.315 “does not set forth any exceptions for providing flight training for hire in a limited category aircraft” and that “the only way to provide such training is pursuant to an exemption from this section of the regulations” following the procedures of 14 CFR part 11.

⁴ Given the broad definition of “operate” in § 1.1, both the owner of a limited category aircraft seeking flight training and the flight instructor providing the training are considered to be operating the aircraft. The FAA notes that the term “operate” has a different meaning from the term “operational control,” which is defined in § 1.1 as “the exercise of authority over initiating, conducting or terminating a flight.”

⁵ Consistent with the position for limited category aircraft, FAA Order 8900.1 addresses the prohibition against the operation of an experimental aircraft to carry persons or property for compensation or hire. It acknowledges that the

these categories of aircraft for compensation is acting contrary to the regulations absent a letter of deviation authority (LODA), if applicable, or exemption.

B. FAA Guidance on Flight Training for Compensation in Experimental Aircraft

FAA Order 8900.1 contains guidance for FAA inspectors that indicates that flight training in an experimental aircraft for compensation is permissible without a LODA under certain circumstances.⁶ The guidance states that flight instructors may receive compensation for providing flight training in an experimental aircraft but may not receive compensation for the use of the aircraft in which they provide that flight training unless they obtain a LODA issued under § 91.319(h). Likewise, the guidance states that owners of experimental aircraft may receive and provide compensation for flight training in their aircraft without a LODA, but owners may not receive compensation for the use of their aircraft for flight training except in accordance with a LODA issued under § 91.319(h).⁷

The distinction set forth in FAA Order 8900.1 is inconsistent with the definition of “operate” in § 1.1 and the plain language of § 91.319. Where a regulation and guidance conflict, the regulation controls.⁸ Accordingly, owners of experimental aircraft and flight instructors who have operated experimental aircraft for the purpose of compensated flight training without obtaining a LODA (as allowed by FAA guidance) will be required to obtain a LODA to remain compliant with the regulations.

III. Process for Compliance

The FAA acknowledges that the disconnect between the regulations and the guidance to inspectors has created confusion in industry. The FAA also recognizes the value of specialized flight training in aircraft that hold special airworthiness certificates under certain conditions. This

restriction “prohibits the widespread use of experimental aircraft for flight training for compensation or hire.” FAA Order 8900.1, Vol. 3, Chpt. 11, sec. 1, para. 3-293.

⁶ FAA Order 8900.1, Vol. 3, Chpt. 11, sec. 1, para. 3-292.

⁷ Although there is no written guidance for limited category and primary category aircraft, the FAA has applied the same approach to flight training for compensation in limited category and primary category aircraft.

⁸ The FAA will revise the guidance in the 8900.1 to reflect the requirements in the regulation.

section provides guidance to owners of affected aircraft and flight instructors seeking to conduct flight training for compensation in these aircraft.

A. Experimental Category Aircraft

In general, the FAA places limitations on the use of aircraft that hold experimental airworthiness certificates because the airworthiness certification requirements for these aircraft impose no standard and pose unique operational risk to the national airspace system. FAA regulations and guidance direct that, for most training, pilots should use a standard category aircraft to accomplish training rather than aircraft that hold special airworthiness certificates.

Section 91.319(h), however, permits a person to apply for deviation authority to conduct flight training in an experimental aircraft. Currently, individuals seeking to provide flight training and receive compensation for both the flight training and the use of the experimental aircraft must submit an application package to the Flight Standards District Office (FSDO) in the district in which the training will take place. Under § 91.319(h)(2), a request for deviation authority must contain a complete description of the proposed operation and justification that establishes a level of safety equivalent to that provided under the regulations for the deviation requested. The FAA generally limits LODAs to training that can only be accomplished in aircraft with experimental certificates and directs its inspectors that, with a few exceptions, LODAs should not be issued to permit flight training in experimental aircraft leading toward the issuance of a pilot certificate, rating, or operating privilege.

As discussed, FAA guidance incorrectly indicates that no LODA is necessary if the owner of an experimental aircraft provides compensation for flight training in the owner's own aircraft and no compensation is provided for the use of the aircraft itself. The FAA will update the guidance to align with the regulation, as previously discussed. To mitigate disruption for this type of flight training, which has been allowed under FAA guidance and is viewed as an increased safety measure for pilots who regularly fly these aircraft, the FAA has developed an interim process to issue LODAs to the owners of experimental aircraft and flight instructors that

will permit flight training for compensation in experimental aircraft when no compensation is provided for the use of the aircraft.

The FAA finds that, for owners of experimental aircraft seeking flight training in the aircraft they will regularly fly in the national airspace, the standard under § 91.319(h)(2) for granting a LODA has been met. The FAA has long emphasized the importance of pilots being trained and checked in the aircraft they will operate. Specifically, it is critical that pilots understand and are familiar with the particular systems, procedures, operating characteristics, and limitations of the aircraft they will operate. This flight training is distinct from a situation where an aircraft with a special airworthiness certificate is “held out” broadly for training to individuals who pay for both the flight training and the use of an aircraft that they will not have further access to upon completion of LODA training. It is also distinct from flight training that can be accomplished effectively and safely in a standard category aircraft.

The FAA will accept requests for a LODA electronically from an owner of an experimental aircraft or flight instructor who chooses to conduct training in experimental aircraft. LODAs, once issued, will define the scope of the flight training activity so that owners of experimental aircraft may receive and provide compensation for flight training in their aircraft, as well as permit flight instructors to receive compensation for flight training in an experimental aircraft. These LODAs will prohibit owners and flight instructors from receiving compensation for any other use of the aircraft in which the flight training is provided.

To obtain a LODA, owners of experimental aircraft and flight instructors providing flight training in experimental aircraft may submit a request to the following email address: 9-AVS-AFG-LODA@faa.gov. Applicants seeking a LODA through this process must provide the following information:

- Name
- Address
- E-mail address

- Pilot Certificate Number
- Flight instructor certificate number (if applying as a Certificated Flight Instructor (CFI))
- Aircraft Registration Number (if applying as an owner)
- Aircraft make/model in which you will receive or provide instruction
- Aircraft home base airport (if applying as an owner)

The FAA will review the information submitted and issue a LODA (via e-mail) that reflects the conditions and limitations contained in this notification, as well any additional limitations required in accordance with § 91.319(h) and (i).

Individuals seeking to provide flight training and receive compensation for both the flight training and the use of the aircraft must continue to apply for LODAs through their local FSDOs.

B. Limited Category and Primary Category Aircraft

Section 91.315 does not permit an individual to obtain deviation authority to conduct flight training for compensation or hire in a limited category aircraft. Therefore, as explained in the 2014 legal interpretation, the only way to provide flight training for compensation in a limited category aircraft is pursuant to an exemption from the regulation. Because there is no deviation authority in § 91.325 for primary category aircraft, the owners of these aircraft and flight instructors seeking to conduct flight training for compensation must likewise obtain an exemption from the regulation.

As with the process for issuing LODAs to owners and flight instructors, the FAA will consider adopting a fast-track exemption process for owners of limited category and primary category aircraft seeking to conduct flight training for compensation in these aircraft. As with experimental category aircraft, the FAA will consider granting relief for flight training operations when compensation is provided solely for the flight training and not the use of the aircraft.

The FAA notes that any operator of a limited category aircraft that holds an exemption to conduct Living History of Flight (LHFE) operations already holds the necessary exemption relief to conduct flight training for its flightcrew members. LHFE exemptions grant relief *to the extent necessary* to allow the exemption holder to operate certain aircraft for the purpose of carrying persons for compensation or hire for living history flight experiences. As a condition of these exemptions, the operators must provide regular flight training and checking to flightcrew members. As such, these flight training operations are considered necessary for the operator to conduct the LHFE flights themselves.⁹ The FAA will clarify this relief when operators apply for renewal of their LHFE exemptions.

For the safety reasons set forth in this notification, the FAA is considering a rulemaking that would enable the flight training activity discussed in this notification without the need to obtain an exemption or LODA from the FAA.

Issued in Washington, DC.

Ricardo Domingo,

Executive Director, Flight Standards Service, AFX-1.

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⁹ The FAA cautions, however, that LHFE exemptions do not permit operators to allow passengers on LHFE flights to manipulate the controls of the aircraft under the guise of flight training. The flight training relief extends only to the LHFE operator's own flightcrew members for the purpose of training those individuals to conduct LHFE flights.